

**RESPONSE UNDER 37 C.F.R. 1.116
EXPEDITED PROCEDURE
EXAMINING GROUP 3736**

S/N 09/880,576

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Alferness	Examiner:	B. Szmal
Serial No.:	09/880,576	Group Art Unit:	3736
Filed:	June 13, 2001	Docket No.:	11998.5USC2
Title:	CARDIAC DISEASE TREATMENT AND DEVICE		
Customer Number:	34379		

CERTIFICATE UNDER 37 CFR 1.6(d)

I hereby certify that this paper is being transmitted by facsimile to the U.S. Patent and Trademark Office, 703.872.9303 on August 7, 2003

By:

Victoria Hanson

Name: Victoria Hanson

REQUEST FOR WITHDRAWAL OF FINALITY OF OFFICE ACTION

Mail Stop AF
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant respectfully requests that the finality of the Office Action mailed May 7, 2003 be withdrawn. Applicant respectfully contends that the May 7, 2003 Office Action was prematurely made final.

Applicant filed a Response on March 11, 2003 in reply to an Office Action mailed September 11, 2002. The September 11, 2002 office action contained rejections under 1.) 35 U.S.C. § 112, first paragraph as being non-enabling, 2.) nonstatutory double patenting, and 3.) 35 U.S.C. § 103. The Response filed on March 11, 2003 addressed these rejections but did not amend the claims. The May 7, 2003 Office Action included an objection to the drawings, and rejections under 1.) 35 U.S.C. § 112, as failing to comply with the written description

requirement, and 2.) 35 U.S.C. § 103. Although the May 7, 2003 Office action included new grounds of rejection, the Office Action was made final.

It is believed that the finality of the May 7, 2003 Office Action conflicts with the procedure set forth in MPEP 706.07(a). There, the MPEP provides:

Under present practice, second or any subsequent actions on the merits shall be final, except when the examiner introduces a new grounds of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

OFFICIAL

Applicant respectfully asserts that the May 7, 2003 Office Action was prematurely made final because Applicant did not amend the claims in the March 11, 2003 response and did not introduce an information disclosure statement, and the examiner introduced a new ground of rejection.

Thus, for the foregoing reasons, Applicant respectfully contends that the final rejection set forth in the May 7, 2003 Office Action was premature. Applicant respectfully requests withdrawal of the finality of the May 7, 2003 Office Action.

Applicant requests that the Patent Office issue a statement on the record indicating that the finality of the May 7, 2003 Office Action is withdrawn.

If the Examiner believes a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the below listed telephone number.

Respectfully submitted,

MERCHANT & GOULD P.C.
P.O. Box 2903
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Date: August 7, 2003

Anna M. Nelson
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Reg. No. 48,935
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08-07-03

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FROM-Merchant & Gould

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Fax Transmission | August 7, 2003

TO: Commissioner for Patents
Attn: Examiner B. Szmal
Patent Examining Corps
Facsimile Center
Washington, D.C. 20231

FROM: Anna Nelson

OUR REF: 11998.5USC2
TELEPHONE: 612.336.4701

Total pages, including cover letter: 13

PTO FAX NUMBER 1-703.872.9303

If you do NOT receive all of the pages, please telephone us at 612.371.5394, or fax us at 612.332.9081.

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AUG 08 2003

GROUP 3700

Title of Document Transmitted:

Amendment Under 37 C.F.R. § 1.116; Request
for Withdrawal of Finality of Office
Action

Applicant: Alferness et al.
Serial No.: 09/880,786
Filed: June 13, 2001
Group Art Unit: 3736
Our Ref. No.: 11998.5USC2

Please charge any additional fees or credit overpayment to Deposit Account No. 13-2725. Please consider this a PETITION FOR EXTENSION OF TIME for a sufficient number of months to enter these papers, if appropriate.

By:

Name: Anna M. Nelson

Reg. No.: 48,935

I hereby certify that this paper is being transmitted by facsimile to the U.S. Patent and Trademark Office on the date shown below.

Victoria Hanson
Signature

August 7, 2003
Date

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